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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GAYLE FRANZEN, in his capacity as Director of the Illinois Department of Corrections, et al.,

Petitioners,

vs.

JUNIOR RAY DUCKWORTH, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

NEIL F. HARTIGAN
Attorney General, State of Illinois
ROMA JONES STEWART
Solicitor General, State of Illinois
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-3000
Attorneys for Petitioners

JEFFREY W. FINKE*
Assistant Attorney General
General Law Division
100 West Randolph Street, 13th Floor
Chicago, Illinois 60601
(312) 917-5694
* Counsel of Record

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INTRODUCTION

In this case the District Court held that the prisoners' pendent state claims were jurisdictionally barred by the Eleventh Amendment. (App. D-1) The District Court alternatively held, as a discretionary matter, that a jury trial of the twenty-one prisoners' legally diverse federal and state claims against each of the six defendants was simply not practical. (Tr. 1004)

The Seventh Circuit reversed and reinstated the pendent state law claims. *Duckworth v. Franzen*, 780 F.2d 645 (7th

Cir. 1985) The Court of Appeals held that the question of the real defendant in interest is governed by federal law even though state law supplies the substantive rule of decision. The Court of Appeals further held that the District Court had grossly abused its discretion in declining pendent jurisdiction on grounds of potential jury confusion and impracticality. (*Id.* at 656). Finally, the Seventh Circuit held, prior to this Court's decision in *Bender v. Williamsport Area School District*, 475 U.S. ____, 106 S.Ct. 1326 (1986), that pendent claims dismissed by the District Court may be reinstated by the Court of Appeals against all six defendants despite the plaintiffs' failure to appeal the underlying federal claims against three of those defendants. (*Id.* at 657).

I.

A CONFLICT EXISTS AS TO WHETHER THE SUPREMACY CLAUSE REQUIRES THE APPLICATION OF FEDERAL LAW TO DETERMINE THE REAL PARTY IN INTEREST QUESTION IN THE CONTEXT OF A STATE LAW CLAIM.

The prisoners argue that to apply state law in determining whether state officials or the State itself is the real party in interest in the context of a state law claim "would shift to the states the power to fix [the federal court's] jurisdiction." (Respondents' Brief In Opposition, p. 2) Such a result, the prisoners contend, would violate the Constitution's Supremacy Clause. (*Id.*)

Initially, it must be admitted that the lower courts are in great disagreement as to whether a claim nominally brought against a state official is to be considered a claim against a sovereign State for purposes of the Eleventh Amendment bar. Indeed, this Court recently noted that it had not been entirely consistent in its treatment of the real party in interest question, but did not resolve the

issue. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 101 (1984).

The lack of clear guidelines governing the real defendant in interest question is dramatically illustrated in this case where the prisoners contend they have brought personal capacity claims against the state corrections officials. Yet the basis of the prisoners' allegations is that defendants are liable for allegedly violating a statute setting forth a requirement that the Illinois Department of Corrections establish rules and regulations; the statute nowhere refers to any particular individual's responsibility. Ill.Rev.Stat. ch. 38, par. 1003-7-4. Moreover, the prisoners' complaints certainly appear to allege typical official capacity claims. See the prisoners' complaint set forth at App. E-5 to E-13. Most importantly, the District Court held that under Illinois law the State of Illinois is the real party in interest on the pendent claims. (App. D-2).

The prisoners' Supremacy Clause argument conflicts directly with this Court's holding in *Pennhurst* (465 U.S. at 104-106) that federal supremacy is not implicated where a plaintiff alleges that a state official is acting contrary to state law only. Accordingly, certain of the prisoners' citations are inapposite because they concern only federal claims where federal supremacy is obviously implicated; they do not, however, concern pendent state claims. See, e.g., *Demery v. Kupperman*, 735 F.2d 1139 (9th Cir. 1984), *cert. denied*, 469 U.S. ____, 105 S.Ct. 810 (1985); *Downing v. Williams*, 624 F.2d 612 (5th Cir. 1980), *vacated on other grounds*, 645 F.2d 1226 (5th Cir. 1981).

Significantly, the Seventh Circuit's holding in this case is squarely at odds with the District of Columbia Circuit's very recent decision in *Morris v. Washington Metropolitan Area Transit Authority*, 781 F.2d 218, 223 (D.C. Cir. 1986) which applied state law in determining whether the defendant could properly claim Eleventh Amendment immunity.

The prisoners cite cases which reject the proposition that a state indemnity statute by itself is sufficient to convert a claim against a state official in his individual capacity into a claim against a State. See, e.g., *Wilson v. Beebe*, 770 F.2d 578, 587-88 (6th Cir. 1985) (state indemnity statute does not make the State the real party in interest). But that contention is not what is at issue in this case in that defendants no longer rely on the Illinois indemnification statute. Rather, the defendants' position is that the real party in interest issue is necessarily determined by state law which is independent of the indemnification question. See *People ex rel. Maciuba v. Cheston*, 25 Ill.App.3d 224, 323 N.E.2d 40 (1st Dist. 1974) (State was the real party in interest in tort suit although state officials were the only named defendants).

Indeed, the District of Columbia Circuit in the *Morris* case made this very distinction in rejecting a voluntary subsidy as a basis for Eleventh Amendment immunity (781 F.2d at 227), yet held other state law determinative of whether the State was the real party in interest. (*Id.* at 223).

Finally, the prisoners argue that there will be no forum shopping for punitive damages in federal court even though punitive damages are not available in the state forum, the Illinois Court of Claims. According to plaintiffs, the federal court must apply Illinois damage law regardless of the governing jurisdictional law. (Respondents' Brief In Opposition, p. 7) Yet this argument only reveals the utter inconsistency of plaintiffs' position—the identical pendent claim may be treated as an individual capacity claim for jurisdictional purposes under federal law and as an official capacity claim for purposes of remedy under state law. This Court never intended to sacrifice the fundamental concerns of comity and federalism to an all-consuming Su-

premacy Clause which encompasses and alters every state law claim brought in federal court. *Hagans v. Lavine*, 415 U.S. 528, 548 (1974) (emphasizing consideration of comity in context of pendent state claim).

Contrary to plaintiffs' contention (Respondents' Brief In Opposition, pp. 5-6), the Supremacy Clause nowhere mandates that a state prisoner be allowed to sue a corrections official in federal court on a state law claim even though the identical claim against the same official may not be brought in an Illinois court of general jurisdiction. Acceptance of the prisoners' position would virtually put the Illinois Court of Claims out of business; the federal courts through their pendent jurisdiction would take over the bulk of the litigation against the State. This Court should take this case to reaffirm that the purpose of the Constitution's Supremacy Clause is to preserve, not to destroy, the independent authority of each sovereign State's judicial system over state law claims.

II.

CONFUSION EXISTS AMONG THE LOWER COURTS AS TO WHETHER THE EXISTENCE OF PENDENT JURISDICTION NEED BE EVALUATED SOLELY AT THE START OF THE LAWSUIT OR THROUGHOUT THE LITIGATION.

The Seventh Circuit reinstated the pendent state law claims against the three prison guards despite the plaintiffs' failure to appeal the underlying federal claims against the guards. *Duckworth v. Franzen*, 780 F.2d 645, 657 (7th Cir. 1985). This result is in direct conflict with *Safeco Insurance Co. of America v. Guyton*, 692 F.2d 551, 556 (9th Cir. 1982) which held that the existence of pendent jurisdiction must be evaluated anew by the Court of Appeals based upon the claims appealed to it.

Plaintiffs' reliance on *Rosado v. Wyman*, 397 U.S. 397 (1970) (Respondents' Brief In Opposition, p. 8) is misplaced in that *Rosado* concerned a situation in which the federal claim became moot due to the operation of law. In this Court's words, it was "a matter beyond the control of the parties." (*Id.* at 404). In contrast, plaintiffs' failure to appeal the adverse decisions on the underlying federal claims in this case was not "a matter beyond the control of the parties"; rather, it resulted from plaintiffs' voluntary decision. Consequently, this case is similar to *Bender v. Williamsport Area School District*, 475 U.S. ____, 106 S.Ct. 1326, 1335 (1986) where this Court dismissed the lawsuit for want of Article III jurisdiction where the proper parties had also voluntarily decided not to appeal.

Moreover, *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966) makes clear that it is particularly appropriate to dismiss the pendent claims where, as here, the state law claims constitute the real body of the case and the federal claim is a mere appendage. A federal court need not "tolerate a litigant's effort to impose upon it what is in effect only a state law case." (*Id.* at 727). The plaintiffs' federal claims against the prison guards, which plaintiffs chose not to appeal, are precisely the type of insubstantial federal claim which this Court had in mind in the just-quoted passage from *Gibbs*.

III.

CONFUSION EXISTS AMONG THE COURTS OF APPEALS AS TO THE APPROPRIATE DEGREE OF DEFERENCE TO BE ACCORDED A DISTRICT COURT'S DISCRETIONARY DECISION TO DECLINE PENDENT JURISDICTION FOR PRACTICAL REASONS.

The prisoners suggest that *Rosado v. Wyman*, 397 U.S. 397 (1970) and *Hagans v. Lavine*, 415 U.S. 528 (1974), sup-

port the Seventh Circuit's reversal of the District Court's decision to decline pendent jurisdiction on the ground of potential jury confusion and impracticality in this case with legally diverse federal and state claims involving twenty-seven parties. But *Rosado* does not support the Seventh Circuit's decision. To the contrary, *Rosado* held the District Court in that case had correctly exercised its discretion with respect to the pendent claims (397 U.S. at 401); thus, this Court reinstated the District Court's decision. Similarly, in *Hagans*, this Court reinstated the District Court's pendent jurisdiction decision which had been overturned by the Court of Appeals. Moreover in *Hagans*, this Court emphasized that there was no single factor which should control the exercise of discretion in retaining or declining pendent jurisdiction, rather the court should look to all the relevant circumstances. (415 U.S. at 548-50). See also, *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726-29 (1966).

Most significantly, the Seventh Circuit's decision in this case holding that regardless of the practical reasons favoring dismissal of the pendent state claims, a District Court must retain pendent jurisdiction whenever a substantial factual overlap exists between the federal and state claims overlooks this Court's consistent policy to rely upon the sound discretion of the District Court. Cf. *Evans v. Jeff D.*, 475 U.S. ____, 106 S.Ct. 1531, 1545 (1986) (District Court has discretion to make determinations on a case-by-case basis in the light of all the relevant circumstances).

The Courts of Appeals are in need of this Court's guidance concerning the proper degree of deference to be accorded a District Court's discretionary decision to decline pendent jurisdiction for practical reasons.

CONCLUSION

As the prisoners concede, the issues in this case concern each and every one of the fifty states. (Respondents' Brief In Opposition, p. 11) They arise every time a state official is sued on a state law claim in federal court. In each of the thousands of lawsuits each year involving pendent claims against state officials, it is necessary to determine whether the State is the real party in interest. This case offers this Court an opportunity to resolve whether federal or state law controls the real party in interest determination.

This case also presents the question of whether an insubstantial underlying federal claim abandoned by the plaintiffs in the District Court can nevertheless provide the basis for the Court of Appeals' reinstatement of previously dismissed pendent state claims against those same defendants.

Finally, this Court should provide guidance to the lower courts as to whether a District Court may properly decline pendent jurisdiction on practical grounds despite an alleged factual overlap between plaintiffs' federal and state claims.

For the foregoing reasons and for the reasons set forth by the amici curiae, petitioners respectfully pray that this Court grant their Petition for a Writ of Certiorari and allow full review of the Seventh Circuit's decision reinstating the pendent claims. Alternatively, petitioners pray that this Court grant their Petition and either summarily reverse the judgment of the Seventh Circuit reinstating the pendent state claims, or vacate the judgment of the Seventh Circuit as to the reinstatement of the pendent

claims and remand this case for reconsideration in light of this Court's recent decision in *Bender v. Williamsport Area School District.*

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois

ROMA JONES STEWART
Solicitor General, State of Illinois
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-3000

Attorneys for Petitioners

JEFFREY W. FINKE*
Assistant Attorney General
General Law Division
100 West Randolph Street, 13th Floor
Chicago, Illinois 60601
(312) 917-5694

* Counsel of Record